Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Streamlining the Commission's .	)	IB Docket No. 95-117
Rules and Regulations for Satellite Application	)	
and Licensing Procedures	)	

OPPOSITION OF DIRECTV, INC.

DIRECTV, Inc.[1] hereby opposes the Petition for Reconsideration filed by TelQuest Ventures, Inc. ("TelQuest") in the above-captioned proceeding. In the order at issue, the Commission adopted streamlined application and licensing procedures and updated information requirements for satellite space and earth stations.[2] On reconsideration, TelQuest attempts once again to re-litigate the Commission's rejection of its application to provide Direct Broadcast Satellite ("DBS") service to customers in the United States using Canadian-authorized satellites at the Canadian-allocated orbital position of 91° W.L.[3] TelQuest's petition is frivolous and should be denied.

Specifically, TelQuest this time takes issue with certain clarifying changes the Commission has made to its new Form 312 satellite and earth station licensing application form,

[1] DIRECTV is a wholly-owned subsidiary of DIRECTV Enterprises, Inc., a licensee in the DBS service and majority-owned subsidiary of HE Holdings, Inc., a Delaware Corporation.

[2] In the Matter of Streamlining the Commission's rules and Regulations for Satellite Application and Licensing Procedures, IB Docket No. 95-117, Report and Order (released Dec. 16, 1996) ("Order").

[3] TelQuest Ventures, L.L.C. & Western Telecommunications, Inc., *Report and Order,* 11 FCC Rcd 13943 (1996) ("Reconsideration Order"); *see* TelQuest Ventures, L.L.C. & Western Telecommunications, Inc., *Report and Order,* 11 FCC Rcd 8151 (1996) ("Dismissal Order").

which requires an applicant to specify whether it seeks to communicate with "non-U.S. licensed satellites," and if so, to identify those satellites and to supply related technical information.[4] These changes -- which merely further clarify Commission policy -- of course reflect the items that TelQuest failed to specify in submitting its own earth station applications to the International Bureau last year. TelQuest thus claims that the clarifying changes adopted by the Commission in this proceeding violate the Administrative Procedures Act, the Communications Regulatory Flexibility Act, and the First and Fifth Amendments of the U.S. Constitution.

As a threshold matter, TelQuest's complaints, in addition to being frivolous, come too late. Contrary to the dictates of Section 1.429 of the Commission's rules governing the reconsideration of rulemaking proceedings, TelQuest has shown no justifiable reason why it could not have participated in the above-captioned docket.[5] Even accepting TelQuest's claim that it was not in existence at the time the Notice of Proposed Rulemaking ("Notice") was issued,[6] the proceeding has been pending for almost two years, and TelQuest certainly could and should have become aware, through the exercise of "ordinary diligence," that the Commission was in the process of examining application requirements and licensing procedures of potential relevance to the bases for procedural dismissal of TelQuest's earth station applications.[7] Furthermore, TelQuest's petition alleges no specific facts or policy arguments that would militate against the Commission's application requirements, other than arguments that relate solely to

[4] TelQuest Petition at 4; *see Order* at Appendix C, Item 22, and Exhibit B, Items B.2, B.3, and B.6.

[5] 47 C.F.R. § 1.429.

[6] TelQuest Petition at 4 n.7.

[7] 47 C.F.R. § 1.429(b)(2).

TelQuest's pending Application for Review of the Bureau's twice-considered dismissal of its earth station applications.[8] This is evidenced most dramatically by the relief that TelQuest seeks, *i.e.*, "reinstate[ment] and grant" of TelQuest's earth stations applications.[9] That relief plainly is inappropriate for the Commission to grant in a general rule making proceeding, and is further evidence of the frivolous nature of the instant petition.

In any event, on the merits, TelQuest's arguments range from the dubious to the ridiculous. They should be rejected in their entirety by the Commission.

First, as mentioned, TelQuest's claims of inadequate notice of the Commission's actions in this proceeding ring hollow. The Bureau's initial order dismissing TelQuest's earth station application was released on July 15, 1996, some nine months ago, and plainly articulated the Bureau's policy view that it would be inconsistent with current and prior Commission policy to consider an earth station application where the space station with which the application proposed to communicate was not properly identified. As DIRECTV and others pointed out, that policy has always been reflected in the earth station application forms required by the Commission,[10] but to the extent that those precise application forms were being revisited in a

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[8] TelQuest Application for Review (Nov. 29, 1996). DIRECTV has opposed this filing as well, which is largely a rehash of TelQuest's arguments before the Bureau.

[9] TelQuest Petition at iii, 20.

[10] As discussed both in the *Dismissal Order* and in the *Reconsideration Order*, the Commission generally does not act on earth station applications unless evidence has been provided that the space station with which the earth station intends to communicate has been or will be definitively licensed. *See Reconsideration Order* at ¶ 9. Even before the amendments made in the *Order*, this policy was reflected directly in the FCC's Form 493 Application form, which required applicants to list either an ALSAT designation for U.S. domestic satellites operating within the frequency bands and geostationary arc coordinated for such facilities or, for other services to international points as TelQuest proposed, that "*each satellite must be listed.*" FCC Form 493 at 2, No. 7 (emphasis added); *see* Public Notice,

pending rulemaking proceeding -- and TelQuest does not dispute that this was the case -- TelQuest had plenty of time and ample opportunity to express its views on what the Commission's earth station processing requirements and standards should be. Even if the Commission's proposals in the *Notice* had departed substantially from the end result reached in the *Order* -- and they did not -- TelQuest plainly had adequate notice of the issues raised in the proceeding, [11] and has no room to complain now because it chose to forego participation.

Second, TelQuest's sweeping and conclusory allegations that the Commission's "new" application rules and policy "completely barred" TelQuest from entering the DBS market are wrong on both counts. As the Bureau concluded and explained -- twice -- the Commission has legitimate policy concerns about granting earth station applications to communicate with satellites that have not been licensed by any administration, and the Commission has expressed that policy in prior decisions.[12] Simply put, the earth station licensing policies of which TelQuest ran afoul are and were not "new." To the extent that they have been more sharply defined by the Commission's new Form 312, TelQuest has articulated no logical or public policy

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Application Filing Requirements for domestic Satellite Earth Station Authorizations, Attachment 3, 2 FCC Rcd 3657, 3660 (1987) (In specifying points of communication not covered by ALSAT designation, "all other satellites must be specifically noted").

[11] *See American Medical Ass'n v. United States*, 887 F.2d 760, 767-68 (7th Cir. 1989) (noting that adequacy of notice of proposed rulemaking has been upheld even in situations where there was an outright reversal of an agency's position). In this case, the Commission's revision of its application form was clearly a "logical outgrowth" of its proposals in the Notice and the record developed in this proceeding. *See United Steelworkers.v. Marshall*, 647 F.2d 1189, 1221 (D.C. Cir. 1980), *cert. denied* 453 U.S. 913 (1981). Indeed, to the extent that TelQuest claims that the Commission had wrongly applied its earth station application requirements, this proceeding could have provided TelQuest with a logical vehicle to make the policy case as to why the rule should be changed. This TelQuest obviously elected not to do.

[12] *Reconsideration Order* at ¶ 9.

basis why the Commission should have reach a different result. And TelQuest certainly has not been "completely barred" from re-applying for an earth station license if it can show that it will communicate with a licensed satellite.

Finally, TelQuest's muddled constitutional claims also should be rejected as frivolous. For example, there has been no violation of the Fifth Amendment because the Commission's actions have deprived TelQuest of no constitutionally protected interest. TelQuest is not a Commission licensee -- only an applicant. While the Communications Act may "require[] the Commission to meet certain standards before depriving TelQuest of an earth station license,"[13] that reasoning could only apply if TelQuest were a licensee in the first instance.[14] Indeed, the untenable nature of TelQuest's position is shown by the absurdity of its consequence: If the proposition that TelQuest advances were valid, there could be no licensing process at all, because every company that bothered to expend resources to apply for an FCC license would be entitled to claim a "property interest in the spectrum" that would compel the Commission to grant it a license. That tortured conclusion simply has no basis in law.

TelQuest's petition for reconsideration should be denied.[15]

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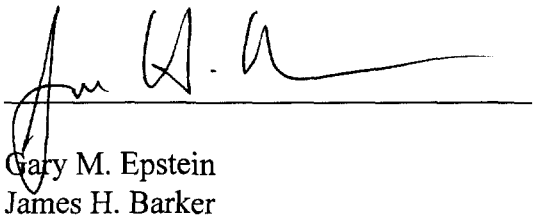
[13] TelQuest Petition at 10.

[14] Similarly, the Supreme Court's reasoning in *Lucas v. South Carolina,* 112 S.Ct. 2886 (1992), provides no support for TelQuest's Fifth Amendment Takings claim. In that case, an owner of private beach front property was deprived of the economic value of his land by virtue of state legislative action that prevented him from building any habitable structure on the property. A fundamental prerequisite of the Court's analysis was the fact that Lucas owned the property in question. Had Lucas not been a property owner, but instead an interested purchaser of the land that had expended some money on title searches and merely expressed an interest in acquiring the site -- the more precise analogy to TelQuest's posture here -- Lucas surely would not have prevailed in his quest for relief.

[15] Because TelQuest has demonstrated no likelihood of success on the merits of its claims; has shown no irreparable injury or reason why it cannot re-apply for an earth station license; and has shown no other

Dated: April 10, 1997

Respectfully submitted,



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public interest reason why implementation of the Commission's rules should be delayed, its concurrent motion for stay should be denied. *See Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

CERTIFICATE OF SERVICE

I, James H. Barker, hereby certify that the foregoing opposition was hand delivered to the following person on April 10, 1997:

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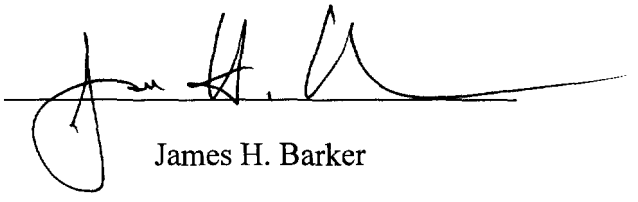

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